

No. 2841.

United States
Circuit Court of Appeals
For the Ninth Circuit

*In the Matter of Application of Lui Hip Chin, an Alien,
for a Writ of Habeas Corpus.*

Brief of Appellee

*Upon Appeal from the United States District Court for the
District of Idaho, Southern Division.*

J. L. McCLEAR,

United States Attorney, District of Idaho.

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Assistant U. S. Attorney, District of Idaho.

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Residence, Boise, Idaho.

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Brief and Argument for Appellee

The statement of the case set forth in the brief of appellant appears to be sufficient for the purpose of this appeal and will make no additional statement.

The appellant alleges twenty-five assignments of error in this case, most of which are answered by the evidence as set forth in the transcript of record. The only assignments of error which are not answered by the evidence are those which raise the question of jurisdiction of the court and are assignments XVII, XVIII, XIX, XXI and XXII. The attorney

for appellant in his points and authorities cites a great many authorities which it is claimed are not authorities in this case as the evidence in the case is far different from the evidence as shown in most of the cases cited in appellant's brief, and a perusal of the evidence in this case is sufficient to show that the appellant had a fair and impartial hearing.

The alien was found at Mountainhome by the Inspector, Thomas Topping, and preliminary statements were taken from the alien and five other witnesses, one Chinaman and four Americans. These statements, with the report of the Inspector, were sent to the Department of Labor at Washington on which the warrant of arrest was issued and on which the alien was arrested. When he was arrested he was brought before the Inspector at Boise, Idaho, accompanied by his counsel, P. E. Cavaney, and from that time on he was represented by counsel at all stages of the proceedings. This proceeding is in accordance with the law as laid down in the case of *Low Wah Suey and Li A. Sim vs. Samuel W. Backus*, Commissioner of Immigration, 225 U. S., p. 459 (56 L. Ed.) 1165. On page 1168 the Court says as follows:

"It is further alleged that Li A. Sim was refused the right to be represented by counsel during all stages of the preliminary proceedings, and was examined without the presence of her counsel and against her will by the immigration officer at the port of San Francisco, and before she had been advised of her right to counsel, and before she was given an opportunity of securing bail; and that afterwards an examination was conducted by the immigration officer, acting under the orders of the Commissioner of Immigration, at which she was questioned by the immigration inspector against her will and without the presence of counsel, who was refused permission to be present, and that at certain stages of the proceedings she was refused the right to consult with counsel. This objection, in substance, is that, under examination before the inspecting officer,

at first she had no counsel. Such an examination is within the authority of the statute and it is not denied that at subsequent stages of the proceedings and before the hearing was closed or the orders were made she had the assistance and advice of counsel."

The alien was represented by his attorney in all proceedings, after the warrant was issued, and had the privilege of cross-examining the witnesses as to the statements made before the issuance of the warrant and all witnesses introduced by the Government after that time, with the exception of two, who, for some reason, it appears were not present. These witnesses were Lui Mon, a Chinaman at Mountainhome, and H. L. Grebe, of Mountainhome. But it is contended on the part of appellee that outside of these two witnesses there is evidence enough to sustain the Department of Labor, and that the proceedings did not deprive alien of his fundamental right and that the order for deportation was made on evidence tending to prove that he was a laborer unlawfully within the country.

In the case of Low Wah Suey and Li A. Sim vs. Samuel W. Backus, *supra*, on page 1167, the Court states as follows:

"A series of decisions in this court has settled that such hearings before executive officers may be made conclusive when fairly conducted. In order to successfully attack by judicial proceedings the conclusions and orders made upon such hearings, it must be shown that the proceedings were manifestly unfair, that the action of the executive officers was such as to prevent a fair investigation, or that there was a manifest abuse of the discretion committed to them by the statute. In other cases the order of the executive officers within the authority of the statute is final."

As said by the District Judge in this case in his memorandum decision:

“No serious contention is made that the petitioner Was denied a fair hearing.”

By Assignment No. XIV it is claimed that the burden of proof shifted to the Government when the certificate in this case was introduced in evidence.

In the case of *United States vs. Quan Wah*, 224 Fed., 420, it is said by the Circuit Court of the Second Curcuit:

“In proceedings to deport a Chinese unlawfully in the United States, the burden of showing the right to remain within the United States is on him.”

And the Court says further in that case:

“It is quite evident that Judge Chatfield found this unpersuasive testimony sufficient to call for a reversal of the commissioner’s decision, because he held that a Chinese person did not have the burden of showing his right to remain in this country, and that it was for the government to show affirmatively that he was not a merchant, nor a merchant’s son, and that he never had a statutory certificate. Since we construe the statute differently, and have held (*U. S. v. Hom Lim*, 223 Fed. 520, C. C. A.), that the burden of showing his right to remain is on the Chinese person, we reach a different conclusion upon the same proof.”

And further, in the case of *Sibray vs. United States*, Vol. 227 Fed. Rep., on page 7, the Court says:

“The burden was on him (the alien) to prove his right to be here and on this point his cretificate of identity was not conclusive but was merely one item of relevant evidence.”

The above case is a case where an alien was admitted at the port of San Francisco as a student but afterward was found working as a laborer.

And in the case of *Sibray vs. United States*, the court says, on page 7:

“Testimony tending to show that he was not a student but a laborer was offered and we have nothing to do with its weight. It is true the proceeding was not conducted in all respects as if a trial in court had been in progress but this was not necessary. The Act of 1907 contemplates a summary investigation and not a judicial trial, and while the alien’s right to be heard must be respected, and the discretion of the officials must not be abused, the formalities of procedure and the rules governing the admissability of evidence have been much relaxed.”

It appears that the alien from the time of his arrest was represented by counsel in all stages of the proceedings, after that time making no objection to the proceedings before the Immigration Inspector, Thomas Topping; that he had a fair hearing, wherein evidence was introduced tending to support the position of the Government that the alien was admitted as a merchant and was afterward found working as a laborer; that as to all questions raised by appellant’s brief, except the matter of jurisdiction of the Bureau of Labor, the proceedings and findings are final.

Low Wah Suey vs. Backus, *supra*.

Assignment XX, alleging that the warrant of deportation was defective and void for the reason that said warrant did not direct that the alien should be deported to the Port of China from which he embarked, seems to have overlooked the Government’s Exhibit C found on page 35 of the Transcript of the Record, which is the warrant of deportation and states as follows:

“You are directed to purchase transportation for the alien from Seattle, Washington, to his home in China.”

Which seems to be sufficient to answer the objection of the appellant.

As to assignments raising the question of jurisdiction, namely, XVII, XVIII, XIX, XXI and XXII, and citing the case *Ex parte Woo Jan*, 228 Fed. 927, the conclusion in that case holds that the Immigration Department had no power to deport Chinese laborers; the District Judge in that case, after so holding, states as follows:

“In so holding, I run counter to the trend of Federal judicial opinion on the subject.”

and cites a number of cases in which a contrary doctrine has been held.

The case of *United States vs. Wong You, Wong Cheen, et al.*, 223 U. S., p. 67 (56 L. Ed.), p. 354, holds that Chinese laborers may be deported, and the same doctrine is laid down in the case of *Sibray vs. United States*, 227 Fed. 1; *Ex parte Li Dick*, 174 Fed. 674, 176 Fed. 998; and case of *Haw Moy vs. North*, 183 Fed. 89.

We respectfully submit that the alien in this case had a fair and impartial hearing; that the Inspector did not exceed his authority; that the alien was represented by counsel at all times which he was entitled to be represented; and as found by the District Judge, there is a preponderance of evidence to show that he was a laborer found within the United States and subject to be deported, and the District Court should be sustained in finding that he should be returned to China.

Respectfully submitted,

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